

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte STEPHEN J. KAWENSKY

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Appeal No. 2004-1175  
Application No. 09/850,307

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ON BRIEF

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Before STAAB, McQUADE, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1 to 20, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to an apparatus to enable movement of a bicycle having a flat tire without having to carry such bicycle and/or riding such bicycle with such tire being deflated (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Graber	4,802,594	Feb. 7, 1989
Caddick	GB 2 224 701 A	May 16, 1990

Claims 1 to 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Graber in view of Caddick.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 12, mailed December 5, 2003) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 11, filed September 8, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 20 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claim 1, the only independent claim on appeal, reads as follows:

In combination with a bicycle having at least one of a damaged wheel and a flat tire mounted on said wheel, the improvement comprising an apparatus to enable movement of said bicycle, said apparatus including:

(a) a non-rotatable tire and wheel support member having an upper surface for engagement by an outer surface of said tire and wheel;

(b) means engageable with said non-rotatable tire and wheel support member for securing said tire and wheel to said non-rotatable tire and wheel support member; and

(c) at least one wheel rotatably engaged to and below said upper surface of said non-rotatable tire and wheel support member for providing rolling contact with a ground surface during movement of said bicycle having said at least one of a damaged wheel and a flat tire mounted on said wheel.

In the rejection of claim 1 under 35 U.S.C. § 103 before us in this appeal (answer, pp. 4-5), the examiner (1) set forth the pertinent teachings of Graber and Caddick; (2) ascertained<sup>1</sup> that "Graber fails to show the support having an upper surface;" and (3) concluded that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bicycle support stand of Graber with the strap-like members, as taught by Caddick for securely engaging and holding down an outer rim of the tire and wheel in order to secure the tire (of any balloon size, including a damaged tire) in the receiving portion thereof.

The examiner has not correctly ascertained the differences between Graber and claim 1. In our view, one difference between Graber and claim 1 is the limitation that the bicycle has "at least one of a damaged wheel and a flat tire mounted on said wheel." Since Caddick does not teach or suggest a bicycle having either a damaged

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<sup>1</sup> After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

wheel or a flat tire mounted on a wheel, the combined teachings of Graber and Caddick would not have led one of ordinary skill in the art to combine their relevant teachings to arrive at the invention as set forth in claim 1.

Since the subject matter of claim 1 is not suggested by the applied prior art as set forth above, the decision of the examiner to reject claim 1, and claims 2 to 20 dependent thereon, under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 20 under 35 U.S.C. § 103 is reversed.

REVERSED

LAWRENCE J. STAAB  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

JEFFREY V. NASE  
Administrative Patent Judge

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